IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

THURSDAY, THE 18TH OCTOBER 2007 / 26TH ASWINA 1929

RCRev..No. 322 of 2007

RCA.83/2005 of DISTRICT COURT, THALASSERY
RCP.137/2001 of MUNSIFF COURT, THALASSERY
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REVISION PETITONER/APPELLANT/RESPONDENT/TENANT:-

C.P. BALAKRISHNAN, AGED 66 YEARS,
S/O RAMUNNI, BUSINESS, RESIDING AT 'SMITHALAYAM'
EDAKKAD AMSOM, THOTTADA, KANNUR DT.

BY ADV. SRI.A.MOHAMED MUSTAQUE
SRI.M.K.SUMOD

RESPONDENTS: RESPONDENT/PETITIONER-LANDLORD

CHEMBRA MUNDACHALI ROHINI,AGED 69 YEARS,
RESIDING AT EDAKKAD AMSOM, ATTADAPPA DESOM,
KANNUR.

BY

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON 18/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.BALAKRISHNAN NAIR & T.R.RAMACHANDRAN NAIR, JJ.

RCR No.322 of 2007

Order

Balakrishnan Nair, J.

The tenant is the revision petitioner. The landlord is the respondent. The eviction was sought under Sections 11(3) and 11(4)(iii) of the Kerala Buildings (Lease and Rent Control) Act, 1965. Late Chembra Kalyani, the original landlord filed the RCP claiming that she requires the tenanted premises for the use of her two grand sons M/s.Ramakrishnan and Prasanthan for starting a business there. They are dependent on her for the room for starting a business. They have no income of their own as they are unemployed. During the pendency of the rent control proceedings, the landlord died. So her daughter Smt.Rohini, the mother of M/s.Ramakrishnan and Prasanthan got herself impleaded as supplementary petitioner and she pursued the claim on behalf of her children under Section 11(3) of the Act. It was also submitted that the tenant has subsequently acquired a room which is sufficient to run his business and therefore, the eviction was sought under Section 11(4)(iii) also. The tenant resisted the application, denying the claim of the landlord. According to him, the sons of the present landlord have no capacity or

experience to run any business. One of them is mentally retarded also. So the claim of bona fide need is only a ruse to evict him. He is depending for his livelihood on the income from the scheduled premises. There is no other room available in the locality. He also submitted that the room acquired by him is not sufficient for running his business which includes stationery, grocery and also the business in coconut husks and shells.

2. Before the Rent Controller, Exts.A1 to A9 were marked from the side of the landlord and PW1 and PW2 were examined as their witnesses. From the side of the tenant, Exts.B1 to B5 were marked and RW1 and RW2 were examined as witnesses, who were respectively the tenant and the Advocate Commissioner. Ext.C1 Commissioner's report and Ext.C2 plan were marked as Court exhibits. The Rent Controller allowed the application on both the grounds. The appellate authority also affirmed the findings of the Rent Controller. Hence this Rent Control Revision.

3. The learned counsel for the petitioner attacks the finding of the appellate authority regarding the bona fide need. He mainly contended that the bona fide need was not properly proved as neither the landlord nor M/s.Ramakrishnan and Prasanthan were examined as witnesses. So the

tenant was disabled in his defence as he was not able to cross examine them on the bona fide need. But the appellate authority found that at the time of trial of the rent control petition, the landlord was laid up with chicken pox. PW1 is the husband of the petitioner in the RCP and the father of M/s.Ramakrishnan and Prasanthan, who required the room for their business. So the witness examined was equally competent to swear on the facts concerning the bona fide need of the landlord. We find that the said view of the appellate authority does not suffer from any infirmity, warranting interference under the revisional jurisdiction. In support of his above submission, the learned counsel for the petitioner also relied on the decision of this Court in **Lakshmi v. Labbahkunju Ameer Hamsa** (2005(3) KLT 627). Special reference was made to para 8 of the said decision, wherein this court criticised the non-examination of the landlord and the dependent son. But, we notice that in this case, the husband of the landlord was examined who was competent to state on all the facts relating to the bona fide need of his sons.

4. The learned counsel for the petitioner submitted that regarding the first limb of the second proviso to Section 11(3), the finding of the Rent Controller was in favour of the tenant. The same was wrongly reversed by the

appellate authority. The appellate authority held that the burden is on the tenant to prove that he is dependent on the income from the premises. We fully agree with the said stand of the appellate authority. The tenant alone knows the details of his income. Admittedly, he has got income other than from the business which is run in the tenanted premises. So, it is for him to show that substantial part of the income is derived from the tenanted premises. in the absence of any evidence, the finding of the appellate authority on this point cannot be faulted. The learned counsel for the petitioner also submitted that the acquisition of another premises by the tenant was wrongly pressed into service for the reason that the Commissioner has clearly stated in the report that the said premises are not sufficient to run his business. Going by the appellate Judgment, we notice that the view taken by the authority is a plausible view on the facts. Even assuming the said point is reversed, still, the same will not affect the fate of the case as the landlord has been held to be entitled 0to eviction under Section 11(3) of the Act. In the result, the RCR fails and it is dismissed. But, having regard to the facts of the case, the petitioner is granted 6 months' time to vacate the tenanted premises provided he files an unconditional undertaking in the form of an affidavit before the Execution

Court, undertaking to vacate the premises within six months from today. He shall also pay the arrears of rent, if any and also the monthly rent payable from time to time till the scheduled premises are vacated. The affidavit in this regard shall be filed within three weeks from today.

K.BALAKRISHNAN NAIR,JUDGE

18.10.2007 **T.R.RAMACHANDRAN NAIR, JUDGE**

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